THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.140 of 1995

1. Arumugam .. Appellant
2. Amavasai
3. Ramachandran
4. Chandran
5. Moorthy
6. Jayamoorthy

-vs-

State by
Inspector of Police,
Kottakuppam Police Station,
Crime No.121/91. .. Respondent

This Criminal Appeal is preferred under S.374(2) of The Code of Criminal Procedure against the judgment of the Sessions Judge, Villupuram Ramasamy Padayachi District, Villupuram, made in S.C.No.55 of 1994 dated 24.1.1995.

!For Appellant : Mr.R.Asokan, Senior Counsel,
for Mr.I.Gunasekaran

^For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor

:JUDGMENT

M.CHOCKALINGAM, J.
The appellants have assailed a judgment of the Sessions Court, Villupuram, made in S.C.55/94 wherein they were found guilty of the offences and awarded sentence of imprisonment, as stated below.

Accused Offences (I.P.C.) Sentence

A-3 302 Life imprisonment

A-1, A-2 & A-4

to A-6 302 r/w 149 Life imprisonment

A-1 148, 324 :
A-2 & A-4 147, 323 : No separate
A-3 147 : sentence
A-5 & A-6 148 :

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2. The appellants and one Nagarathinam stood charged for the offences alleging that on 26.4.1991 at about 7.30 P.M. in front of the house of Gandhi @ Sammansnathan at Keelputhupattu Colony, armed with deadly weapons like knife, sulukki, etc., constituted into an unlawful assembly with the common object of causing the murder of Gandhi @ Sammansnathan, assaulted him in front of his house and caused the injuries, and in the same transaction, assaulted one Yacoob in front of his house, who succumbed to his injuries.

3. The case of the prosecution can briefly be stated as follows:

P.W.1 Sagayamary is the wife of the deceased Yacoob. P.W.2 Susaimarianathan is the brother's son of the deceased. P.W.3 Kerlinmary is the daughter-in-law of the elder brother of the deceased. P.W.4 Victoria is the wife of the elder brother of the deceased. P.W.5 Vincent is the Pangali of the deceased. P.W.6 Gandhi @ Samananathan is the elder brother of the deceased. P.W.7 Rossinmary is the daughter of P.W.6. P.W.8 Velankanni is the pangali of the other witnesses. The deceased and all the witnesses were residing at Keelputhupattu Colony. All the accused were also residents of the same place. P.W.5 was acting as an agent of a soda factory at Kaalapatti in securing coolies. A-1 was employed in the said soda factory. P.W.5 used to get the salary and distribute it among the coolies. When there was a delay in distributing the salary, A-1 quarrelled with P.W.5 that he retained the salary of the coolies with him and purposefully delayed in the distribution of the same. Pursuant to the same, on 1.1.1991, A-1 and seven others attacked P.W.5. P.W.5 gave a complaint to Kottakuppam Police station, and thus, P.W.5 and A-1 were on inimical terms. On 26.4.1991 at about 18.00 hours one Harikrishnan of the said Colony rode a bicycle along Matha Koil Street in a rash and negligent manner. At that time, P.W.6 Gandhi @ Sammansnathan was taking his food in front of his house. By the rash and negligent cycling of Harikrishnan, the dust fell on the food, taken by P.W.6. Enraged over that, P.W.6 assaulted Harikrishnan with hands. Harikrishnan informed the alleged assault to A-1 and others of the said Colony, who gathered and questioned P.W.6 about the assault of Harikrishnan. Since there was previous enmity between the groups of A-1 and P.W.5, P.W.5 and his men assaulted A-1 and others at about 19.00 hours in front of the house of P. W.5. Following the same, A-1 and his group formed an unlawful assembly armed with deadly weapons like knife, sulukki and sticks and assaulted P.W.6 Gandhi @ Sammansnathan, and P.W.6 sustained number of bleeding injuries. At that time, after his work, the deceased Yacoob was returning in a cycle. A-1 and other accused chased Yacoob. Pointing to the deceased, A-2 made a declaration "the deceased was responsible for all, and he was the reason for all the disputes, cut him, stab him". Twice A-1 attacked the deceased on his neck with a sulukki. A-2 attacked with a stick on his head. The deceased fell down. A-3 and A-4 kicked him on his chest. Looking all these, P.W.1 cried. A-5 attacked her with a stick on her back. P.Ws.2 to 9 witnessed the occurrence. Since the neighbours assembled, the accused fled

from the scene of occurrence.
4. At about 8.55 P.M. P.W.11 Dr.Sivadasan admitted P.W.6 as an inpatient, examined him, gave treatment to him and has given Ex.P7 wound certificate for the injuries found on him. Ex.P10 is the case sheet pertaining to the treatment given to P.W.6, which is marked through P.W.12 Dr.Dilipkumar. P.Ws.1 and 2 took the deceased to Pondicherry Government Hospital, where he was declared dead by P.W.11 Doctor. The Doctor gave Ex.P6 intimation to the Out Post Police Station. At about 21.00 hours, A-1 appeared before the Kottakuppam Police Station and gave a complaint to the Head Constable, who was in charge of the Police Station at that time. The Head Constable recorded the statement of A-1 and registered a case in Crime No.120 of 1991 under Ss 147, 1 48, 324 and 323 against 10 accused including the deceased. The said complaint and the printed F.I.R. are marked as Ex.D1. On 26.4.1991 at about 10.00 P.M. when P.W.19 Arivalagan was on duty as Sub Inspector of Police in Kottakuppam Police Station, P.W.1 gave Ex.P1 complaint. P.W.19 recorded her statement, and on the strength of Ex.P1 complaint, he registered a case in Crime No.121 of 1991 under Ss 147, 148, 3 26, 324, 323 and 302 of I.P.C. Ex.P21 Printed First Information Report was despatched to Court. On 27.4.1991 at about 3.45 A.M., P.W.11 Doctor examined P.W.1. Ex.P9 is the case sheet pertaining to P.W.1.
5. On receipt of the copies of the F.I.Rs. in both Crime Nos.120 and 121/91, P.W.20 Ramamurthy, Inspector of Police, Marakkanam took up the investigation of both the cases and proceeded to the place of occurrence at about 2.00 A.M. on 27.4.1991. At 6.00 A.M., he inspected the place of occurrence in both the cases and prepared Ex.P2 common observation mahazar and Ex.P22 rough sketch in the presence of witnesses. At about 7.00 A.M., he recovered from the place of occurrence M. O.2 bloodstained earth and M.O.3 sample earth under Ex.P3 mahazar in the presence of P.W.10 Ramalingam and one Rajendran. He recovered near the house of the deceased M.O.4 (series) two sticks under Ex.P4 mahazar. He recovered M.O.5 (series) casuarina sticks in front of the house of P.W.8 under Ex.P5 mahazar. He conducted inquest on the body of Yacoob in the presence of the witnesses at the Government Hospital, Pondicherry between 10.00 A.M. and 12.00 Noon and prepared Ex.P23 inquest report.
6. On receipt of Ex.P11 requisition from the Investigation Officer, P.W.13 Dr.Balaraman attached to the Government Hospital, Pondicherry commenced and conducted the autopsy at about 3.00 P.M. on 27.4.1991 on the dead body of Yacoob and found the following external and corresponding internal injuries.
1. Punctured incised wound 1 cm x 0.7 cm x 1.5 cm depth present over right side of neck 7 cm below right mastoid process. The wound is directed downwards and inwards. On dissection great vessels of the neck are intact.
2. Ill defined swelling 8 x 7 cm size present over right temporal region of head. On dissection contusion 8 x 6 x 2 cm present.
3. Multiple small abrasion over an area of 9 cm x 3 cm present over the chest on right side.
4. Multiple small abrasion of 8 x 3 cm area present over the chest on left side, above nipple.
5. Abrasion 1 x 0.5 cm present over front of left shoulder.

6. Abrasion 3 x 0.5 cm size present over left side of abdomen.
7. Lacerated injury 1 x 0.5 x 0.5 cm present over front of right knee joint.

On dissection of chest, fracture of ribs 4th, 5th, 6th and 7th rib on right side with bruising of tissues at mid clavicular line. Fracture of ribs 2nd, 3rd, 4th, 5th, 6th, 7th, 8th on left side at mid clavicular line with bruising of tissues. Dark red fluid blood present in Thoracic cavity. Lungs collapsed and contused on both sides.
On dissection of abdomen, laceration 7 x 1 x 1.5 cm present over right lobe of liver. 500 ml. of dark red fluid blood present in Abdominal cavity.
P.W.13 Doctor has issued Ex.P12 postmortem certificate and has opined that the deceased died of shock and haemorrhage due to injuries to the chest and abdomen.
7. The Investigation Officer arrested A-1, A-6 and A-7 and Harikrishnan at 7.00 P.M. at Pondicherry New Bus Stand. Pursuant to the confessional statement, A-1 produced M.O.1 Sulukki, and the same was recovered under Ex.P24 mahazar. The Investigation Officer recorded the statement of the witnesses. The arrested accused were remanded to judicial custody. He arrested the other accused on 3.5.1991 and remanded them to judicial custody. He obtained the wound certificate for P. W.6 and examined P.W.11 Doctor, who gave treatment to P.W.6. He recorded the statement of the accused. He recorded the statement of P.W.1 1 Doctor, who gave treatment to A-1. P.W.21 M.Raju, Inspector of Police, took up the further investigation of the case. Ex.P27 is the Chemical Analyst's report. Even before the commencement of the trial, A-3 died. The death certificate is marked as Ex.P28. On completion of the investigation, he filed the charge sheet against the accused.
8. In order to bring home the guilt of the accused, the prosecution examined 21 witnesses and marked 28 exhibits and 6 material objects. On completion of the prosecution evidence, the accused were questioned under S.313 of Cr.P.C., when they denied the versions of the prosecution witnesses and have added that it was a false story, but they were attacked by the prosecution witnesses. On the side of the accused, 2 witnesses were examined, and 9 documents were marked. After consideration of the rival submissions and scrutiny of the available materials, the learned Sessions Judge found them guilty in accordance with the charges levelled against them and awarded the punishment as stated supra. Hence, the aggrieved appellants/accused have preferred the present appeal. During the pendency of the appeal, A-2 died, and a certificate issued by the Village Administrative Officer to that effect has been produced by the Additional Public Prosecutor. Hence, the appeal as against A-2 stands abated.

9. Arguing for the appellants, the learned Senior Counsel Mr.R. Asokan would submit that the trial Court has found the appellants/accused guilty in a case where the prosecution has not only relied on the testimony of the close relations of the deceased, but also failed to prove the case beyond all reasonable doubts. P.Ws.1 to 5, who according to the prosecution, have witnessed the occurrence, are close relatives of the deceased and to each other. While it is admitted that there were number of houses around the place of occurrence, no independent witness has been examined. It is pertinent to point out that the prosecution has not attributed any motive to the accused to cause the death of the deceased Yacoob, and hence, there could not have been any common object to commit murder, and on that ground, the lower court should have dismissed the charges under S.302 read with S.149 of I. P.C. Except P.W.1 all other witnesses have not spoken anything about either the presence

of the accused, except A-1 and A-2 or any of the overt acts attributed to them. There was a huge delay in reporting the matter to the police, which remained unexplained. The available evidence would throw a doubt whether the First Information Report came into existence as put forth by the prosecution, since P.W.1 has stated that she accompanied the dead body to the hospital, and on coming to know the death of her husband, she came back to the police station and gave a complaint, but according to the Doctor, she was examined only by 3.45 A.M. There is no evidence to show that she came for treatment with a medical memo. But, the Doctor has stated that she came on her own accord, and this fact coupled with the fact that the F.I.R. reached the Judicial Magistrate at 6.10 A.M. on 27.4.1991 would indicate that the First Information Report should have come into existence only after 3.45 A.M. According to the prosecution, the place of occurrence where Yacoob was attacked and died, was near his house. But, during investigation, no bloodstained earth has been recovered from that place. The Doctor, who conducted the autopsy has categorically pointed out that at the place of occurrence, there should have been oozing of blood, and hence, it would be clear that the investigation agency has shifted the scene of occurrence in order to suit its case. It cannot be stated that the medical evidence was in support of the ocular evidence, since the overt acts attributed to the accused by the eyewitnesses do not tally with the injuries found on the person of the deceased, as stated in the postmortem report. According to the Postmortem Doctor and the description of the injuries found in the postmortem report, the injuries found on the chest and stomach of the deceased led to his death. But, the overt acts attributed to the accused by the so-called eyewitnesses could not have caused those injuries. P.Ws.2 to 5 have deposed that a group of persons, apart from the accused, assaulted the deceased on the chest and stomach. There were fractures of ribs 2 to 8 on the left side of the chest, and a lacerated injury on the liver was found by the Postmortem Doctor. But, P.W.1 has not spoken anything about those injuries. It remains to be stated that those eyewitnesses do not even speak about the presence of A-3 to A-6 at the time of the assault. P.W.6 during the narration of events, has not spoken anything about the presence of the deceased or as to any of the alleged overt acts made by the accused on the deceased at the time of occurrence. There are so many circumstances available in the entire evidence, including the evidence of P.W.10 an independent witness to indicate that the occurrence could not have taken place in front of the house of the deceased and in the manner alleged by the prosecution. The death of Yacoob seems to have occurred in the course of a group clash that took place in front of the house of one Ramasamy. Many persons have participated in the group clash. The prosecution witnesses and the deceased Yacoob were the aggressors. The occurrence has actually commenced in front of the house of Jayamurthy, and the accused were attacked in front of the house of one Ramasamy. In that transaction A-1 sustained grievous injuries. It was he, who gave the First Information Report which was registered in Crime No.120/91, and the same was earlier to the Crime Number in question. D.W.1 Doctor has examined A-1 and A-5, when he found number of injuries and has issued Exs.D6 and D8 wound certificates respectively. But, the prosecution did not account for the injuries caused on the accused at the time of the occurrence. In the instant case, there was only one occurrence, wherein number of accused, the deceased and P.Ws.1 to 6 were injured, and Yacoob died. This would be evident from the fact that though two cases were

registered in Crime Nos.120 and 121/91, the Investigation Officer has taken both the cases together and prepared a common observation mahazar and a rough sketch and, and he has also noted the scene of occurrence in the sketch and has also recovered the material objects including bloodstained earth and weapons from the place of occurrence. Under such circumstances, a duty was cast upon the prosecution to clearly point out the genesis of the occurrence, but in the instant case, the prosecution has miserably failed to do so. There was a group clash in which number of persons belonging to both the parties were injured. Under such circumstances, it cannot be stated that there were two separate transactions. It has to be necessarily pointed out that violating the statutory procedure, the prosecution has not placed any or all the records pertaining to Crime No.120/91 when case in counter has arisen in the course of the same transaction. All the witnesses, relied on by the prosecution for the confessional statement of the accused and the recovery of the material objects have turned hostile. The Investigation Officer has in his evidence has categorically admitted that the investigation could not reveal who used which weapon in the occurrence. It is not only a case where the investigation agency could not find out the real aggressors, but has also not placed the full and complete picture of the case, enabling the court to find out the truth. Under such circumstances, the lower court should have rejected the case of the prosecution in entirety and acquitted the appellants-accused also. Since the prosecution has neither proved its case nor placed all the materials before the court, the appellants/accused have got to be acquitted of the charges levelled against them. In support of his contentions, the learned Senior Counsel relied on the following decisions: 1) 1998 SCC (Crl.) 712; 2) 1997 SCC (Crl.) 752; 3) 1976 SCC (Crl.) 671; 4) 1998 SCC (Crl.) 1064; and 5) 1993 SCC (Crl.) 1117. 10. In reply to the above contentions and in his sincere attempt to sustain the judgment of the lower court, the learned Additional Public Prosecutor Mr.V.M.R.Rajendran would submit that P.W.5 has clearly spoken about the prior enmity prevailing between both the parties. It is not correct to state that the prosecution has not placed the genesis of the occurrence. All the accused armed with deadly weapons, constituted into an unlawful assembly, came to the occurrence spot and attacked P.W.6. A reading of the evidence of P.W.6 would clearly reveal all the overt acts of the accused. It is true that following the same, there was a group clash in which the accused have also sustained injuries. All the injuries sustained by the accused, as evidenced by the medical certificates, were either simple or superficial injuries. Under such circumstances, there was no duty cast upon the prosecution to explain the said injuries. It is pertinent to note that the deceased Yacoob was coming in his cycle, who was chased by the accused. P.Ws.1, 2 and 5 have clearly narrated the incident by speaking about the individual overt acts committed by the accused during the commission of the crime. It is not correct to state that the police agency has shifted the place of occurrence. From the evidence, it would be clear that Yacoob was attacked by the accused only in front of his house, where he succumbed to his injuries instantaneously. It is true that no bloodstained earth was found therein, since there could not have been any oozing of blood, in view of the injuries caused to him. The investigation in the case was undertaken by two Inspectors of Police successfully. The first Inspector who was in additional charge of the Circle, has undertaken the investigation of both Crime Nos.120 and 121/91 jointly, prepared a common observation mahazar

and a rough sketch and recovered the material objects. The Investigation Officer has clearly spoken to the fact that the investigation in the other case was pending at the time of the trial of the instant case. It cannot, but be admitted that there was some irregularities in the investigation, but those irregularities were curable, and in no way, it would affect the truth of the prosecution case. Hence, the lower court was perfectly correct in finding all the appellants/accused guilty, and the judgment of the lower court has got to be sustained. The learned Additional Public Prosecutor relied on the following decisions: 1) 1999 CCR 121 SC and 2) 1996 CCR (2) SC 164. 11. As seen above, the appellants/accused stood charged on different counts, and they were found guilty thereon. Admittedly, the deceased Yacoob, his wife P.W.1 and the witnesses examined by the prosecution as injured and the eyewitnesses are all close relatives to each other, and the appellants/accused are residents of Keelputhupattu Colony. P.W.5 Vincent engaged himself as an agent for securing coolies for a Soda Factory, wherein A-1 was employed. In view of the delay in distribution of the wages to the coolies, there arose a quarrel between them, and P.W.5 was assaulted, which resulted in a complaint given by P.W.5 against A-1 and others. Thus, A-1 and P.W.5 were on inimical terms. On the date of occurrence, viz. 26.4.1991 at about 6.00 P. M., P.W.6 Gandhi @ Sammansnathan was taking his food in front of his house situated in Matha Koil Street. At that time, Harikrishnan, who belonged to the accused party, drove his cycle negligently, and the dust fell on his food. Aggrieved P.W.6 assaulted Harikrishnan. On information by Harikrishnan, the residents of his Colony headed by A-1 assembled and questioned P.W.6. It is true that P.W.6 has narrated the overt acts of the appellants-accused and the injuries that were sustained by him. He has added that immediately after the said attack, he fell unconscious. According to P.W.11 Dr.Sivadasan, who admitted P.W.6, he was conscious, and he has stated that he sustained those injuries in a group clash. P.W.3 has admitted that there was a group clash between the two groups at Mariamman Koil Street. Though the said witness has spoken about the attacks made by A-1 and A-2 on the deceased, she has not spoken anything about any part of the occurrence which preceded, despite her knowledge about the same. Equally, P.W.2 also has spoken about the overt acts of A-1 and A-2, but has not even referred to any of the other accused. P.W.1, who is the wife of the deceased has deposed that her husband was attacked by the appellants. It is pertinent to note that both the witnesses have admitted that four persons of either party were injured in that clash. But, they have conveniently suppressed the part of the occurrence, that preceded the attack on Yacoob. 12. On a complaint given by P.W.1, as found under Ex.P1, P.W.19 Sub Inspector of Police, Kottakuppam Police Station has registered a case at 10.00 P.M. in Crime No.121/91. It is admitted by P.W.19 that on a complaint by A-1, a case was registered, and the F.I.R. is marked as Ex.D1. A perusal of Ex.D1 F.I.R. would reveal that on the complaint given by A-1, a case against the prosecution witnesses and the deceased Yacoob was registered in Crime No.120/91 under ss 147, 148, 324 and 323 of I.P.C. on an information given by him at 9.00 P.M. in respect of an occurrence that took place at 19.00 hours on the very day, and the place of occurrence is shown as in front of the house of Jayamurthy, which is situate in Mariamman Koil Street. P.W.11 Doctor examined A-1 and A-5, gave treatment to them and issued Exs.D6 and D8 wound certificates respectively. P.W.20 Inspector of Police who took up the investigation in both cases in Crime No.120/91 at the instance of A-1 and

Crime No.121/91 at the instance of P.W.1, proceeded to the spot, made an inspection, prepared Ex.P2 common observation mahazar and Ex.P22 rough sketch and recovered the material objects also. All the above would be indicative of the fact that on the date of occurrence, when A-1 and his men questioned the act of P.W.6 in assaulting Harikrishnan, it broke out a group clash, in which some of them in the prosecution party and some of them in the accused party were injured. 13. It is the specific case of the prosecution that Yacoob who was coming in a cycle at that time, was chased by the accused and was done to death. It is pertinent to note that the entire group clash has taken place at Mariamman Koil Street, wherefrom Yacoob was alleged to have been chased. Hence, it would be abundantly clear that the attack on Yacoob was not a separate incident, but a continuation and a part of the transaction that was going on that time. At this juncture, it has to be pointed out that all the prosecution witnesses have not whispered anything about the earlier part of the transaction, but would say that they came to know about the same later. Taking into consideration the time and the place of occurrence and the fact that the attack on Yacoob was in continuation of the same transaction, it would be abundantly clear that all the eyewitnesses have deliberately suppressed that part of the transaction, in which the accused were injured by the attacks made by the prosecution party. It is pertinent to note that the prosecution has neither placed the F.I.R. nor the records pertaining to Crime No.120/91 in order to enable the court to find out the correct and real incident. Without any hesitation, it can be well stated that the failure on the part of the prosecution in not placing all the relevant records pertaining to Crime No.120/91 had made it impossible for the Court to understand the complete picture of the case. Under such circumstances, it would be extremely unsafe and hazardous to fix the accused as the aggressors and fasten them with criminal liability. From the evidence adduced by D.Ws.1 and 2 Doctors, who examined and treated A-1 and A-5 and Exs.D6 and D8 wound certificates in that regard, it would be clear that A-1 and A-5 sustained injuries in the course of the said transaction. A perusal of Ex.D6 would certificate would reveal that A-1 sustained two incised wounds viz. 1) An incised wound 6 x 1 x 1 cm left parietal area of scalp; and 2) An incised wound 4 x 1 x 1 inch front of wound No.1. 14. On a complaint by A-1 a case in Crime No.120/91 was also registered by the same Police i.e. even before the case in question. No one of the witnesses have spoken anything about the injuries sustained by the accused or the manner in which they were caused. In the instant case, the defence has examined two witnesses and filed the wound certificates. It is true that the non explanation of the injuries by the prosecution may not affect its case, if the injuries sustained by the accused are minor and superficial and if the evidence adduced by the prosecution is clear and cogent, so disinterested and independent, so probable, consistent and creditworthy and remains in such a way that it would outweigh the effect of the omission on the part of the prosecution to explain the injuries. But, it is not the case here. The injuries found on the accused ca nnot be brushed aside as minor and superficial. That apart, all the eyewitnesses examined by the prosecution are interested and interrelated, who have deliberately shielded the earlier part of the occurrence, in which the said accused were assaulted resulting in those injuries. No doubt the non explanation of the injuries on the person of the said accused would certainly lead to the adverse inference and has affected the case of the prosecution fatally. 15. The

Court is able to see force in the contention put forth by the appellants' side that the scene of occurrence was not the place, where the dead body of Yacoob was found, as alleged by the prosecution, and the scene of occurrence has been shifted in order to suit the prosecution story. According to the rough sketch and the observation mahazar, the dead body of Yacoob was found in front of his house. It is the evidence of P.Ws.1 and 2 that Yacoob was attacked in front of the house. The nature of the weapon and the manner of attack as put forth by those witnesses, if considered, would certainly cause profuse bleeding at the place of occurrence. But, no bloodstained earth was recovered by the Investigation Officer at the said spot. P.W.13 Doctor, who conducted the autopsy on the dead body of Yacoob has deposed that the first injury was a bleeding one. P.W.10, an independent witness, who has attested the mahazar for the recovery of the material objects, has stated that the body of Yacoob was found in front of the house of one Ramasamy. In the rough sketch prepared by the Investigation Officer, Ramasamy's house is shown as item 12, in front of which a red mark indicating the presence of blood, is also shown. This would cast a doubt whether any assault of the deceased Yacoob would have happened in front of the house of the deceased as alleged by those witnesses. 16. According to P.W.1, she accompanied the dead body of her husband Yacoob to the hospital, and her husband was declared dead by P.W.11 Doctor, and at about 9.00 P.M. she informed to the Doctor about the injuries sustained by her, and at about 10.00 P.M., she proceeded to the Kottakuppam Police Station and gave Ex.P1 complaint. But, according to P.W.11 Doctor, she was examined at about 3.45 A.M. on 27.4.1991 . But, she was not examined by P.W.11 Doctor on a medical memo issued by the police agency. The F.I.R. has also reached the concerned Magistrate's Court by 6.10 A.M. All these would cast a doubt whether Ex.P1 complaint and the corresponding F.I.R. could have come into existence at 10.00 P.M. as alleged by the prosecution. 17. The contention of the prosecution that the evidence of P.W.1 is fully corroborated by the evidence of the other eyewitnesses cannot be countenanced. It remains to be stated that P.W.6 has spoken about the attacks made on him and not the other part of the occurrence. All other eyewitnesses do not whisper anything about that part of the occurrence in which the accused were injured. It is quite evident that they have deliberately suppressed the same. The available evidence would indicate that the deceased Yacoob could not have been assaulted at the place shown as scene of occurrence in the sketch. While the evidence of the eyewitnesses suffers from infirmities and is not reliable in view of the suppression, no question of one corroborating the other would arise. 18. All the eyewitnesses marched by the prosecution, are closely related to each other and the deceased. It is well settled that the evidence of the eyewitnesses, even if they are close relatives, cannot be discarded on the ground of the relationship, provided their evidence is otherwise cogent, consistent and trustworthy and stands the close scrutiny. In the instant case, the Court may hasten to say that the evidence of the eyewitnesses does not stand the careful scrutiny, in view of the suppression of material facts. Significant it is to note that the Investigation Officer has admitted that the final report in Crime No.120/91 was not filed even during the trial of this case arising out of Crime No.121/91. Quite evident it is that there was a group clash at the time and place of occurrence, which has led to the framing of the charges against the appellants/accused and has also given rise to the registration of the case in Crime No.120/91, wherein the prosecution witnesses

were shown as accused. The prosecution has not placed the full and complete picture of the whole occurrence before the Court enabling to find out the truth and fix the aggressors, and in the absence of the same, it would be highly difficult to accept the case of the prosecution and also unsafe to record a finding that the appellants/accused were guilty of the said charges. Under the stated circumstances, it cannot be stated that the prosecution has proved all or any of the charges levelled against the appellants beyond reasonable doubt. The judgment of the court below has got to be set aside, and the appellants/accused have to be acquitted. 19. In the result, this criminal appeal is allowed, setting aside the judgment of conviction and sentence passed by the lower court. The appellants/accused are acquitted of the charges. The bail bonds executed by the appellants, if any, shall stand cancelled.

Index: yes (P.S.M.J.) (M.C.J.)
Internet: yes 23-9-2002
To:
1. The Sessions Judge, Villupuram Ramasamy Padayachi District.
2. The District Collector, Villupuram Ramasamy Padayachi District.
3. The Director General of Police, Chennai 4.
4. The Superintendent, Central Prison, Cuddalore.
5. The Superintendent, Central Prison, Vellore.
6. The Public Prosecutor, Madras.
7. The Judicial Magistrate, Vanur.
8. The Judicial Magistrate, Vanur,
Through The Chief Judicial Magistrate, Villupuram Ramasamy Padayachi District.
9. The Inspector of Police, Kottakuppam Police Station.

nsv/

P.SHANMUGAM, J.
AND
M.CHOCKALINGAM, J.
Judgment in
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